

REMARKS

The Applicants have received and carefully considered the Final Office Action dated December 23, 2003. The Final Office Action has taken the position that the claims presented by the November 11, 2003 amendment are independent or distinct from the invention originally claimed. The Final Office Action withdrew all the claims to the present application for invention from consideration as being directed to a non-elected invention. The Final Office Action also states that the Applicants' amendment necessitated the restriction and made the Office Action dated December 23, 2003 final.

The Applicants, hereby, request reconsideration of the restriction made in the Final Office Action dated December 23, 2003 for the reasons stated below. The Applicants further request that the finality of the December 23, 2003 Office Action be withdrawn and that a Notice of Allowance issue based on the merits of claims as amended by the November 11, 2003 amendment and response filed by the Applicants.

The November 11, 2003 amendment filed by the Applicants amended the claims to the present application for invention to more particularly point out and distinctly claim the subject matter that the inventors regard as the invention by replacing the first and second channels with the more specific recitation of first and second physical features. The Applicants do not concur the change of the recitation from the "first and second channels" to "first and second physical features" results in claims that are independent or distinct from the invention as originally claimed. The Applicants would like to, respectfully, point out that the first and second channels had already been defined in Claim 8 as originally claimed in a manner that is clearly not independent or distinct from the claims presented in the November 11, 2003 amendment.

The Applicants would like to, respectfully, draw the Examiner's attention to the recitations made by Claim 8 before the November 11, 2003 amendment that is reproduced below.

Claim 8. The record carrier as claimed in any of the preceding claims characterized in that said first channel is represented by first variations of a first physical parameter of the record carrier and said second channel is represented by second variations of a second physical

parameter of the record carrier, said second physical parameter differing from said first physical parameter.

It should be readily apparent that Claim 8 prior the November 11, 2003 amendment, characterized the term first channel as being represented by first variations of a first physical parameter of the record carrier and that the term second channel is represented by second variations of a second physical parameter of the record carrier. Therefore, before the November 11, 2003 amendment, the first and second channels were defined as variations of physical parameters within the record carrier. The Applicants, respectfully, submit that variations of physical parameters within a record carrier are essentially equivalent to physical features within the record carrier. At the very least, using the terminology "physical features within the record carrier" compared to the original claims that recited "variations of physical parameters within the record carrier" does not result in claims that are independent or distinct.

There should be no question that if the November 11, 2003 amendment had attempted to change the first and second channel to, respectively, first variations of a first physical parameter and second variations of a second physical parameter that no restriction would have resulted because this terminology already existed in Claim 8 and the change would be nothing more than incorporating the limitations of a dependent claim in to the basic claim. There should also be no question that that if the November 11, 2003 amendment had attempted to change the first and second channel to first and second physical parameters that no restriction would have resulted, again because again these are simply limitations that were within a dependant claim.

The November 11, 2003 amendment replaced the terms "first channel" with "first physical feature" and the term "second channel" with the term "second physical feature". The Applicants, respectfully, submit that replacing the term channel with the term physical feature does not create an independent or distinct invention, especially when channel is defined by originally submitted Claim 8 as a variation of a physical parameter.

The MPEP at §803 details when restriction is proper and when restriction is not proper. The MPEP at §803 clearly states that if "the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." As previously discussed, the Applicants aver that the claims provided by the November 11, 2003 amendment are not independent or

distinct from the invention originally claimed. The Applicants, respectfully, submit that examination of the claims provided by the November 11, 2003 amendment can be made without a serious burden on the part of the Examiner. As previously discussed, Claim 8 as originally filed amendment defined "channel" as variations of physical parameters within a record carrier. Also as previously discussed, the terminology "variations of physical parameters within a record carrier" is essentially equivalent to the terminology "physical features within a record carrier".

The Applicants, respectfully, submit that examination of the claims as submitted by the November 11, 2003 amendment that recite "physical features" in place of channel do not impose a serious burden on the Examiner.

The Applicants would also like to, respectfully, point out that any search of the claims filed by the November 11, 2003 amendment should not cause a serious burden on the Examiner. The Examiner states that the claims filed by the November 11, 2003 amendment fall within class 369/275.3. The Examiner has already made a search of class 369/275 and this is evident by citation of Balston et al. (U.S. Patent No. 4,672,600) in the Notice of References Cited provided by the Examiner in relation to the claims originally submitted. Accordingly, it appears that class 369/275 has already been searched. The foregoing is not to be construed as an admission that the claims filed by the November 11, 2003 amendment result in a different classification. The foregoing analysis is only attempting to place the issues in perspective, that the reclassification suggested by the Examiner has already been searched, or at least any search required by the November 11, 2003 amendment would not impose a serious burden upon the Examiner.

The Examiner states in the December 23, 2003 Final Office Action, that the November 11, 2003 amendment modified the claims such that they are directed towards a stereo signal being recorded using first physical features and second physical feature which are different from each other and classified in class 369/275.3. The Examiner also states that the original claims were directed towards a record carrier recording stereo signals and data signals in a channel comprising a first portion and a second portion. The Applicants respectfully submit that the changes made by November 11, 2003 amendment to the claims essentially modified the claims in a manner wholly consistent with the invention originally recited by Claim 8. The November 11, 2003 amendment does no more than change the terminology from a channel that is represented by variations of a physical parameter of the record carrier to the terminology provided by the November 11, 2003 amendment of a physical feature that is represented by

variations of a physical parameter of the record carrier. The Applicants would like to, respectfully, point out that Claim 8 as originally submitted defined "channel" as represented by variations of a physical parameter of the record carrier, and that the term "channel" should reasonably have been interpreted as a physical feature. The MPEP at §806(C) states that where "inventions are related as disclosed but are not distinct as claimed, restriction is never proper." The Applicants would like to, respectfully, point out that the only reasonable interpretation of the term "channel" is akin to that recited by Claim 8 prior the November 11, 2003 amendment and defined by the specification of the present application for invention in the description relating to Figures 1 and 2.

The MPEP at §806.03 states that where "the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition." As previously discussed, Claim 8 before the November 11, 2003 amendment defined the same essential characteristics as the Claims filed by the November 11, 2003 amendment. Accordingly restriction is not proper.

The Applicants would like to, respectfully, point out that the November 11, 2003 amendment was made by the Applicants simply to distinguish the claims of the present invention from cited references. It appeared that the term, "channel" was being read very broadly by the Examiner. Accordingly, the November 11, 2003 amendment was made to specifically use terminology that was similar to that used in Claim 8. Claim 8 had no rejection based on the prior art. The Applicants content that the claims filed by the November 11, 2003 amendment are not independent or distinct from the invention originally claimed. Accordingly, the restriction of the claims to the present invention made in the December 23, 2003 Final Office Action is, respectfully, traversed for the foregoing reasons. It is respectfully, requested that the restriction requirement made in the December 23, 2003 Final Office Action be rescinded and that a notice of allowance be given.

In view of the foregoing response, the Applicants respectfully request that the restriction to the claims to the present invention be rescinded. The Applicants further request that the finality of the December 23, 2003 Office Action be withdrawn and that merits of the November 11, 2003 amendment made by the Applicants be addressed and a notice of allowance issued.

Respectfully submitted,

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